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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,212	08/16/2001	Ryuji Hotta	212905US3	9211

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EXAMINER

TRAN A, PHI DIEU N

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/930,212

Applicant(s)

HOTTA, RYUJI

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,6-8,11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,6-8,11,13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. PRODUCT BY PROCESS CLAIM:

“ The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

The limitations “wherein the fastening member is enabled to be fixed ...by a nail or a screw....with the nail” in claims 1, 7, 8, 14 are treated according to the above office policy with regard to product by process limitations.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 7, 8, 11, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant figures 17-21 in view of Gabriel (2249125), Japan (293890) and Helfrecht (DE 3304806).

Applicant figures 17-21 shows a fastening member being disposed over an upper rabbeted horizontal edge of a lower siding board (2) and a lower rabbeted horizontal edge of an upper siding board (2), the fastening member is enabled to fixed to the framework by a nail or screw (through the holes 98, 99), the fastening member being of a shape that is elongated in lateral directions such that a plurality of studs of the framework that are disposed in a laterally aligned manner may be connected and fixed, the fastening member having a base plate portion abutting against rear side surfaces of siding boards (2) that are vertically disposed, a support portion (92) that is provided to erect frontward from the base plate portion, an upper board

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engaging portion that is bent in an oblique upward direction from the support portion an upper board engaging portion (93), a lower board engaging portion (94) that is bent in an oblique downward direction from the support portion, the base plate portion having an upper abutting portion and a lower abutting portion at its upper and lower portion , an upper rising portion and a lower rising portion (911, 912) that are respectively formed in a frontward rising manner from the upper abutting portion and the lower abutting portion, the lower rising portion comprising a horizontal plane portion (912) that is arranged to form a **substantially** right angle with respect to the central plate portion(91), a central plate portion being installed to connect the upper rising portion and the lower rising portion and abutting against the rear side surfaces of the siding boards, the support portion (92) is formed to be erected from the central plate portion, the upper rising portion comprising a sloped portion (911) wherein a nail hole is formed on the sloped portion, the siding boards attachment structure is a constructing structure employing a framework wall construction method.

Applicant figures 17-21 does not show an upper abutting portion and a lower abutting portion that abut the underlayment at its upper and lower portion, the upper rising portion comprising a horizontal plane portion that is arranged to form a substantially right angle with respect to the central plate portion, the lower abutting portion comprising a screw hole, the screw and nail holes being at substantially equal distance from the support portion.

Gabriel shows underlayment being interposed between being interposed between a nail or screw.

Japan (figure 1) shows the lower abutting portion (6) having a screw hole being at substantially equal distance from the support portion to that of the nail hole.

Helfrecht shows upper and lower rising portion comprising a horizontal plane portion (32) that is arranged to form a substantially right angle with respect to the central plate portion (34).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Applicant's figures 17-21 to show an upper abutting portion and a lower abutting portion that abut the underlayment at its upper and lower portion as taught by Gabriel, the upper rising portion comprising a horizontal plane portion that is arranged to form a substantially right angle with respect to the central plate portion as taught by Helfrecht, the lower abutting portion comprising a screw hole being at the same distance from the support member as that of the nail hole as taught by Japan because having underlayment at the upper and lower portion would provide insulation to the frame structure, having a horizontal plane portion perpendicular to the central plate portion for the upper rising portion would enhance the supporting strength of the upper rising portion as taught by Helfrecht, and having screw holes at the lower abutting portion of substantially equal distance from the support as that of the nail hole would enable secure and balance attachment of the fastener to the building frame.

Per claims 4, 11, Applicant figures 17-21 as modified shows all the claimed limitations except for protruding portions projecting frontward from an upper end of the abutting portion and from a lower end of the lower abutting portion.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Applicant's figures 17-21's modified structure to show protruding portions projecting frontward from an upper end of the abutting portion and from a lower end of the lower

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abutting portion because it would strength the upper and lower abutting portion against bending moments and stress.

3. Claims 6, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant figures 17-21 in view of Gabriel (2249125), Japan (293890) and Helfrecht (DE 3304806).

Applicant figures 17-21 as modified shows all the claimed limitations except for the lower abutting portion having an abutting surface that is substantially parallel to the central plate portion.

Japan further shows the lower abutting portion having an abutting surface that is substantially parallel to the central plate portion.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Applicant's figures 17-21's modified structure to show the lower abutting portion having an abutting surface that is substantially parallel to the central plate portion because it would allow for extra attachment area for attaching the fastener to the frame structure as taught by Japan (figure 4).

Response to Arguments

4. Applicant's arguments with respect to claims 1, 4, 6-8,11,13-15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Phi Dieu Tran A
July 27, 2003

PA

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Lanna Mai